

A. G. Contract No. KR94-0114-TRN  
JPA No.: 93-191  
Item No.: 834 *OSC*  
TRACNo.: H 2400 ~~060~~  
Project: RAM 600-1-534  
Section: Pima @ Chaparral Rd.

**AGREEMENT**  
BETWEEN  
THE STATE OF ARIZONA  
AND  
WAL-MART STORES, INC.

THIS AGREEMENT is entered into 1 July, 1994,  
pursuant to Arizona Revised Statutes, Sections 11-951 through  
11-954, as amended, between the STATE OF ARIZONA, acting by and  
through its DEPARTMENT OF TRANSPORTATION (the "State") and  
WAL-MART STORES, INC., acting by and through its BOARD OF  
DIRECTORS ("Wal-Mart").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes  
Section 28-108 to enter into this agreement and has by  
resolution, a copy of which is attached hereto and made a part  
hereof, resolved to enter into this agreement and has delegated  
to the undersigned the authority to execute this agreement on  
behalf of the State.

2. Wal-Mart is empowered to enter into this agreement and  
has by resolution, a copy of which is attached hereto and made  
a part hereof, resolved to enter into this agreement and has  
authorized the undersigned to execute this agreement on behalf  
of the corporation.

3. The State is currently in agreement with Maricopa  
County (JPA 93-61), attached hereto and made a part hereof, to  
construct certain roadway and drainage improvements for  
portions of Chaparral Road. Maricopa County is obligated to  
place \$432,000.00 in an escrow account with the State based on  
the estimated cost for their requested improvements within the  
boundaries described in JPA 93-61, Section II.1.a.

4. Incident to said agreement with Maricopa County and  
the State's construction of the Pima Freeway (101L), Wal-Mart  
desires to complete a certain portion of the improvements on  
Chaparral and Pima Roads, in order to accommodate the  
construction of a Wal-Mart store on the southeast corner of  
Chaparral and Pima Roads, herein referred to as the Project.

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5. It is intended in this agreement that the items which are to be shared by the State and Wal-Mart within the boundaries described in JPA 93-61, Section II.1.a., the State's portion of the funding will be funded from the Maricopa County's deposit, which were to originally be paid for by the County.

6. The purpose of this agreement is to define the responsibilities regarding construction, funding and compliance with applicable plans, standards and specifications.

7. Should either entity request additional work beyond the Scope of Work herein described, it will be fully responsible for the entire cost.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

## II. SCOPE OF WORK

### 1. Wal-Mart will:

a. Call for bids and award one or more construction contracts for the Project. Administer same and make all payments to the contractor. Be responsible for any contractor claims for extra compensation attributable to Wal-Mart.

b. Install at its own expense, a 16" DIP water main in lieu of the 12" DIP water main shown on the State's plans, for the entire length of the project at 23 ft.<sup>±</sup> North of Chaparral Road centerline. Grade will be as shown for the 12" DIP on plan sheet drawings U3.1, U3.2 and U3.3 and valves, fire hydrants and other lateral will also be as shown on the revised 12" DIP plan sheets.

c. Install at the State's expense, the 24" VCP(HS) sanitary sewer, as shown on plan sheet drawing U4.1 as revised, from station 30+82 to 23+40<sup>±</sup>, the 5 foot diameter manhole (MH) at station 26+25 and the 15" VCP(HS) from the MH a distance of 76 feet to the proposed plug. Supply the State invoices for the following materials, 24" VCP(HS), 15" VCP(HS), concrete for MH bottom, precast manhole risers and cone, and manhole frame and cover.

d. Install at the State's expense, the 12" ductile iron pipe class 50 sanitary sewer replacement as shown on the plans drawing No. U2.3 from station 31+00 to 23+50<sup>±</sup> and three sanitary sewer manholes identified as Nos. 6, 7 and 8.

e. Install at a 50/50 shared expense with the State, a portion of the Chaparral Road storm drain system as shown on the State's plan sheet drawings D6.3 D6.4, G4.1 and G4.2 as follows, pipe run C-26 from station 23+70 $\pm$  to CB-C27, pipe run C-28 from CB-C27 to CB-C29, pipe run C-27 from CB-C27 for 55 feet  $\pm$  North and pipe run C-29 from CB-C-29 for 50 feet  $\pm$  North. CB-C-27 and C-29 will be constructed to an elevation 2 feet  $\pm$  below proposed grate elevation and capped as per standard drawing C-15.91.

f. Construct at a 50/50 shared expense with the State, the South Chaparral Road curb and gutter from station 23+82.55 to 30+65.55 as shown on the plans, the South half of pavement, as per Pavement Structural Section No. 4 from station 23+82.55 to 31+08.92 and the North Chaparral Road curb and gutter from station 90+00 $\pm$  to 30+72.28 as shown on the plans and the North half of pavement as per Pavement Structural Section No. 4 from station 29+00 $\pm$  to 31+08.92.

g. Install at a 50/50 shared expense with the State, the traffic signal modification at the intersection of Chaparral Road and Pima Road as shown on drawing No. T-8.5 of the plans.

h. At its own expense, develop and submit for review and approval to the State, a traffic control plan for the various phases of construction and in interim signing and pavement marking for Chaparral Road. All traffic control devices and pavement markings for the phases and interim conditions will be at 100% Wal-Mart cost.

i. Design and install at its own expense, a facility to irrigate the Arable land bounded on the North by the South property line of Wal-Mart, on the East by the State right of way line for Pima Freeway, on the West by the existing Pima Road right of way and on the South by the existing irrigation ditch one half mile, plus or minus, South of Chaparral Road. The facility will be so designed as to accommodate the proposed future 36" irrigation pipe proposed for installation on the future State project on the South side of Chaparral. Also included will be any necessary modification to maintain operation of the tailwater facility just East of Pima Road.

j. Be responsible for any contractor claims for extra compensation attributable to Wal-Mart.

k. Be responsible for all applicable permits from the State, Maricopa County, City of Scottsdale, Salt River Pima-Maricopa Indian Community (SRPMIC), etc.

1. Supply as-built drawings of all underground utilities installed using stationing, offset and elevations as shown on State project plans. Certify all material used meets all applicable State specifications and all material installations comply with plans and standards. Provide quantity calculations and documentation for State review prior to reimbursement.

2. The State will:

a. Be responsible for actual installation costs of the 24" VCP(HS) sanitary sewer, the 15" VCP(S) and 5' diameter MH as described in II.1.c.

b. Be responsible for actual installation costs of the 12" sanitary sewer replacement and three (3) sanitary sewer manholes, as described in II.1.d.

c. Be responsible for 50% of the costs for the Chaparral Road storm drain system, as described in II.1.e.

d. Be responsible for 50% of the costs for construction of the South Chaparral Road curb and gutter, the South half of pavement, the North half of pavement, and the North Chaparral Road curb and gutter, as described in II.1.f.

e. Be responsible for 50% of the installation costs of the traffic signal modification the intersection of Chaparral Road and Pima Road, as described in II.1.g.

f. Upon receipt of an invoice from Wal-Mart, remit payment from construction funds and/or the Maricopa County's funds after 1 July 1994 as appropriate.

g. Be responsible for all improvements within the State right of way until completion of the Pima Freeway (Chaparral Road), at which time an agreement will be made and responsibility will be turned over to Maricopa County.

### III. MISCELLANEOUS PROVISIONS

1. All material and construction within the State right of way will comply with applicable plans, standards and specifications and will be monitored by State inspection.

2. This agreement shall remain in force and effect until completion of said construction and final payment; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, may be cancelled at any time prior to the award of a construction contract, upon thirty (30) days written notice to the other party.

3. This agreement shall become effective upon filing with the Secretary of State.

4. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

6. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

7. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, Mail Drop 616E  
Phoenix, AZ 85007

Wal-Mart Stores  
c/o Dunaway Associates West, Inc.  
4500 S. Lakeshore Dr., Suite 250  
Tempe, AZ 85282

8. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

**WAL-MART STORES, INC.**

**STATE OF ARIZONA**

Department of Transportation

By Robert M. Bedard  
ROBERT M. BEDARD

Assistant Vice President

By Robert P. Mickelson  
ROBERT P. MICKELSON, P.E.  
Chief Deputy State Engineer

**WAL-MART STORES, INC.**  
**ASSISTANT SECRETARY'S CERTIFICATE**

The undersigned, Clara L. Willis, an Assistant Secretary of Wal-Mart Stores, Inc., a Delaware corporation (the "Corporation"), hereby certifies that he has been elected, qualified and is acting in such capacity and that, as such, he is familiar with the facts herein certified and is duly authorized to certify the same, and thus hereby certifies:

That Robert M. Bedard, Director of Real Estate and Construction of the Corporation, the Chairman, the President, or any Vice President of the Corporation, is authorized to execute and deliver, for and on behalf of the Corporation the following described agreement and documents:

Agreement Between The State of Arizona and Wal-Mart Stores, Inc.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the said Corporation this 8th day of June, 1994.

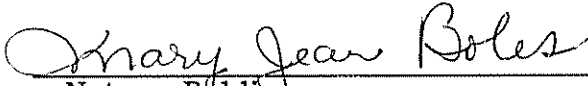
WAL-MART STORES, INC.

[Corporate Seal]

  
Clara L. Willis  
Assistant Secretary

Subscribed and sworn before me this 8th of June, 1994.

My commission expires June 13, 1999.

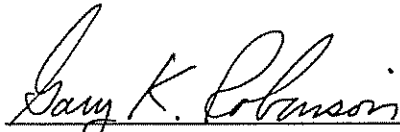
  
Notary Public

[Seal]  
2112.CER/WORKING.MST

RESOLUTION

BE IT RESOLVED on this 10th day of January 1994, that I, the undersigned, LARRY S. BONINE, as Director of the Arizona Department of Transportation, have determined that it is in the best interest of the State of Arizona that the Department of Transportation, acting by and through the Highways Division, to enter into an agreement with the Wal-Mart Stores, Inc., for the purpose of defining responsibilities for the construction of improvements on Chaparral Road, to accommodate the construction of a Wal-Mart store to be completed in January 1994.

THEREFORE, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Chief Deputy State Engineer for approval and execution.

for:   
LARRY S. BONINE, Director  
Arizona Department of  
Transportation

A. G. Contract No. KR93-0703-TRN  
ECS File: JPA-93-61  
Project: RAM-600-1-534  
TRACS No. H 2400 06C  
Section: Pima Freeway at  
Chaparral Road (Construction)

**INTERGOVERNMENTAL AGREEMENT**  
**BETWEEN**  
**THE STATE OF ARIZONA**  
**AND**  
**MARICOPA COUNTY**

THIS AGREEMENT is entered into 27 January, 1994,  
pursuant to Arizona Revised Statutes, Sections 11-951 through  
11-954, as amended, between the STATE OF ARIZONA, acting by and  
through its DEPARTMENT OF TRANSPORTATION (the "State") and  
MARICOPA COUNTY, acting by and through its Board of Supervisors  
(the "County").

**I. RECITALS**

1. The State is empowered by Arizona Revised Statutes  
Section 28-108 to enter into this agreement and has by  
resolution, a copy of which is attached hereto and made a part  
hereof, resolved to enter into this agreement and has delegated  
to the undersigned the authority to execute this agreement on  
behalf of the State.

2. The County is empowered by Arizona Revised Statutes  
Section 11-251 to enter into this agreement and has by  
resolution, a copy of which is attached hereto and made a part  
hereof, resolved to enter into this agreement and has  
authorized the undersigned to execute this agreement on behalf  
of the County.

3. Incident to the construction of the Pima Freeway  
(101L), Section 10g, the County has requested and the State has  
agreed to construct certain roadway and drainage improvements  
for Chaparral Road, herein referred to as the "Project", a  
portion of which is to be at the County's expense, estimated at  
\$432,000.00. Project limits are between Station (-)6+00 to  
Station 16+16.18 and between Station 23+82.55 to Pima Road.

THEREFORE, in consideration of the mutual agreements expressed  
herein, it is agreed as follows:

NO. <u>18379</u>
FILED WITH SECRETARY OF STATE
Date Filed <u>01/27/94</u>
<u>Richard Mahoney</u> Secretary of State
By <u>Vicky V. Greenwald</u>

## II. SCOPE OF WORK

### 1. The State will:

a. On Chaparral Road at the County's expense, between Station (-)6+00 to Station 11+00 and between Station 25+00 to Pima Road, construct an asphalt concrete pavement section on Chaparral Road; install or modify traffic signals as designed; construct curb and gutter, catch basins, connector pipes and storm drains, including extension of existing irrigation culvert and wing walls at Pima Road and install signing and pavement marking.

b. Call for bids and award one construction contract for the Project. Administer same and make all payments to the contractor. Be responsible for any contractor claims for extra compensation attributable to the State on the State project.

c. On or about July 1, 1994, invoice the County \$432,000.00, the estimated cost for the County requested improvements referred to in II.1.a.

d. Upon completion of the Project, invoice the County for any additional costs incurred by the State during construction of the County requested improvements referred to in II.1.a., or refund any excess funds provided. Invoice shall be based upon actual construction costs plus 15 percent for the State's engineering and administration.

### 2. The County will:

a. Within 45 days of receipt and approval of an invoice, reimburse the State the estimated costs for construction of the County requested portion of Project as referred to in II.1.a., estimated at \$432,000.00.

b. Be responsible for any contractor claims for extra compensation due to delays or for whatever reason attributable to the County.

c. Upon completion of the Project, remit to the State within 45 days of receipt of the final invoice, for any additional costs incurred by the State during construction of the Project.

d. Upon completion of the Project and transfer of the right of way to the County, provide maintenance for all portions of the project within the County right-of-way with the exception of traffic control signing, lighting, and traffic signal equipment associated with the Pima Freeway.

### III. MISCELLANEOUS PROVISIONS

1. This agreement shall remain in force and effect until completion of said Project; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, may be cancelled at any time prior to the award of a construction contract, upon thirty (30) days written notice to the other party.

2. This agreement shall become effective upon filing with the Secretary of State.

3. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

4. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

5. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

6. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, Mail Drop 616E  
Phoenix, AZ 85007

Maricopa County Department of Transportation  
Transportation Director  
2901 West Durango Street  
Phoenix, Arizona 85009

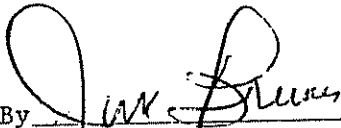
7. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

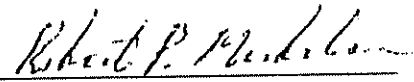
IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

MARICOPA COUNTY

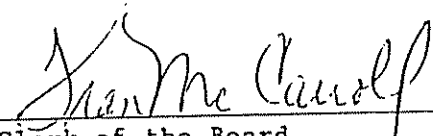
STATE OF ARIZONA

Department of Transportation

By   
Chairman of the Board  
Title

By   
ROBERT P. MICKELSON, P.E.  
Deputy State Engineer

Attest by:

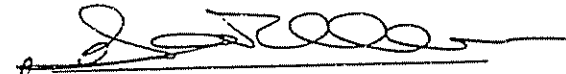
  
Clerk of the Board

DOCECSJP.126.4  
10/14/93

RESOLUTION

BE IT RESOLVED on this 15th day of April 1993, that I, the undersigned LARRY S. BONINE, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Highways Division, to enter into an agreement with the County of Maricopa for the purpose constructing certain roadway and drainage improvements for Chaparral Road.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Deputy State Engineer for approval and execution.

  
\_\_\_\_\_  
LARRY S. BONINE  
Director

MARICOPA COUNTY BOARD OF SUPERVISORS  
AGENDA FORM

Contract/Lease for ☐ NEW ☐ RENEWAL ☐ AMENDMENT ☐ CANCELLATION  
LOW ORG. NO. 0450 DEPARTMENT: Transportation/Planning  
ENCUMBRANCE NO. 05941106 AGENCY: Environmental Management & Trans. Agency

030587  
CONTROL NUMBER: TD 166-93  
CONTROL NUMBER: PW 311

1. BRIEF DESCRIPTION OF PROPOSAL AND REQUESTED BOARD ACTION: It is recommended by the Transportation Director that the Board of Supervisors approve an Intergovernmental Agreement with the Arizona Department of Transportation (ADOT). Incident to the construction of the Pima Freeway, the State is agreeing to construct certain roadway and drainage improvements for Chaparral Road, a County road, at County expense, estimated at \$432,000. These improvements consist of extending a widened pavement section to a more appropriate termination point than what ADOT would normally do. Upon completion of construction the Maricopa County Department of Transportation (MCDOT) will provide maintenance within County right-of-way, except for traffic control associated with the Pima Freeway. This is a subsequent agreement to one approved by the Board of Supervisors on December 9, 1991 which provided for the design of this project. Funds are programmed for this project in the Capital Improvements Program for Fiscal Year 1994-95 under work Order No. 68735.

This project is 100% unincorporated, and is located in Supervisory District No. 5.

Upon approval by the Board of Supervisors, please return the original executed documents to the Maricopa County Department of Transportation for forwarding to ADOT for their execution of the agreement.

2. Compliance with Maricopa County Procurement Code

10  
article

MCL-1004  
paragraph

Renate Lewis  
Procurement Officer

SOLE SOURCE JUSTIFICATION:

3. CONTINUED FROM MEETING OF  
DISCUSSED IN MEETING OF

4. ☐ THIS DEPARTMENT WILL CAUSE PUBLICATION  
☐ CLERK OF THE BOARD TO CAUSE PUBLICATION

5. MOTION: It is moved that the Maricopa County Board of Supervisors: approve an Intergovernmental Agreement with the Arizona Department of Transportation (ADOT) which provides for the State to construct certain roadway and drainage improvements for Chaparral Road, a County road, at County expense, estimated at \$432,000, incidental to the construction of the Pima Freeway.

6. FINANCIAL: ☒ Expenditure ☐ Revenue ☒ Budgeted ☐ Contingency ☐ Budgeted Amendment ☐ Transfer ☐ Grant or Other

\$432,000 FY94-95 CIP  
TOTAL FUND Transportation

11-22-93  
FINANCIAL OFFICER E. Abayta DATE

7. PERSONNEL:

PERSONNEL-DIRECTOR

DATE

8. DEPARTMENT: Transportation - 6400

MH:pr

11-10-93  
ACTION RECOMMENDED BY D.E. Sagramoso DATE

9. MATERIALS MANAGEMENT:

A. 11/19/93  
MATERIALS MGMT DIR. DATE

B. 11-19-93  
WMBE REPRESENTATIVE DATE

10. LEGAL: Approved as to form and within the powers and authority granted under the laws of the state of Arizona to the Maricopa County Board of Supervisors.

11-19-93  
DEPUTY COUNTY COUNSEL J. Minter DATE

11. OTHER:

SIGNATURE

DATE

12. APPROVED FOR AGENDA: Environmental Management & Trans. Agency - Asst. Co. Mgr.

11-19-93  
APPROVING OFFICIAL L. Schmitt DATE

13. OTHER:

SIGNATURE

DATE

15. RECOMMENDATION OF COUNTY MANAGER:

☒ Approved ☐ Disapproved

Comments:

12/8/93  
COUNTY MANAGER DATE

14. BOARD OF SUPERVISORS: Action taken:


☒ Approved ☐ Amended ☐ Disapproved ☐ Deleted  
Continued to:

12/8/93  
CLERK OF THE BOARD DATE

APPROVAL OF THE MARICOPA COUNTY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION and MARICOPA COUNTY and declare this agreement to be in proper form and within the powers and authority granted to the County under the laws of the State of Arizona.

DATED this 19 day of November, 1993.

  
County Attorney



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

GRANT WOODS  
ATTORNEY GENERAL

1275 WEST WASHINGTON PHOENIX 85007-2926

MAIN PHONE : 542-5025  
TELECOPIER : 542-4085

INTERGOVERNMENTAL AGREEMENT  
DETERMINATION

A. G. Contract No. KR93-0703-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. §11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 19<sup>th</sup> day of January, 1994.

GRANT WOODS  
Attorney General

JAMES R. REDFATH  
Assistant Attorney General  
Transportation Section

JRR:lsr  
8365G